

AMENDED IN ASSEMBLY MAY 31, 2016

AMENDED IN ASSEMBLY APRIL 13, 2016

AMENDED IN ASSEMBLY MARCH 18, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2405

Introduced by Assembly Member Gatto
(Coauthor: Assembly Member McCarty)

February 19, 2016

An act to amend Section 230.8 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2405, as amended, Gatto. Employment: employees: time off.

Existing law prohibits an employer who employs 25 or more employees working at the same location from discharging or discriminating against an employee who is a parent, as defined, having custody of a child in a licensed child day care facility or in kindergarten or grades 1 to 12, inclusive, for taking off up to 40 hours each year to find, enroll, or reenroll their child in a school, to participate in school activities, or address emergency situations at school, subject to specified conditions. Existing law requires an employee to use vacation or other paid time off when taking time off under these provisions and authorizes the use of unpaid time off, to the extent made available by the employer.

This bill would require an employer to annually provide an employee at least ~~24~~ 8 hours of paid time off for the purposes of a planned absence under these provisions, except as specified, and would instead authorize an employee to use vacation or paid time off, or use unpaid time off, if available, when taking time off under these provisions.

The bill would provide a remedy to an employee whose request for time off under these provisions is denied by the employer. The bill would require the Labor Commissioner to create a poster listing the protections available to employees and would require an employer to post it at the workplace, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 230.8 of the Labor Code is amended to
2 read:

3 230.8. (a) (1) An employer who employs 25 or more
4 employees working at the same location shall not discharge or in
5 any way discriminate against an employee who is a parent of one
6 or more children of the age to attend kindergarten or grades 1 to
7 12, inclusive, or a licensed child care provider, for taking off up
8 to 40 hours each year, for the purpose of either of the following
9 child-related activities:

10 (A) To find, enroll, or reenroll his or her child in a school or
11 with a licensed child care provider, or to participate in activities
12 of the school or licensed child care provider of his or her child, if
13 the employee, prior to taking the time off, gives reasonable notice
14 to the employer of the planned absence of the employee. Time off
15 pursuant to this subparagraph shall not exceed eight hours in any
16 calendar month of the year.

17 (B) To address a child care provider or school emergency, if
18 the employee gives notice to the employer.

19 (2) If more than one parent of a child is employed by the same
20 employer at the same worksite, the entitlement under paragraph
21 (1) of a planned absence as to that child applies, at any one time,
22 only to the parent who first gives notice to the employer, such that
23 another parent may take a planned absence simultaneously as to
24 that same child under the conditions described in paragraph (1)
25 only if he or she obtains the employer's approval for the requested
26 time off.

27 (b) (1) The employee may utilize existing vacation, personal
28 leave, or compensatory time off for purposes of the planned
29 absence authorized by this section, unless otherwise provided by
30 a collective bargaining agreement entered into before January 1,

1 1995, and in effect on that date. An employee also may utilize time
2 off without pay for this purpose, to the extent made available by
3 his or her employer.

4 (2) The employee shall annually be provided at least ~~24~~ *eight*
5 hours of paid time off for the purposes of the planned absence
6 authorized by this section, unless otherwise provided in a collective
7 bargaining agreement entered into before January 1, 2017.

8 (3) Except as set forth in paragraph (2), the entitlement of any
9 employee under this section shall not be diminished by any
10 collective bargaining agreement term or condition that is agreed
11 to on or after January 1, 1995.

12 (4) Notwithstanding paragraph (1), in the event that all
13 permanent, full-time employees of an employer are accorded
14 vacation during the same period of time in the calendar year, an
15 employee of that employer may not utilize that accrued vacation
16 benefit at any other time for purposes of the planned absence
17 authorized by this section.

18 (c) The employee, if requested by the employer, shall provide
19 documentation from the school or licensed child care provider as
20 proof that he or she engaged in child-related activities permitted
21 in subdivision (a) on a specific date and at a particular time. For
22 purposes of this subdivision, “documentation” means whatever
23 written verification of parental participation the school or licensed
24 child care provider deems appropriate and reasonable.

25 (d) Any employee who is denied time off under this section,
26 discharged, threatened with discharge, demoted, suspended, or in
27 any other manner discriminated or retaliated against in terms and
28 conditions of employment by his or her employer because the
29 employee has taken or requested time off to engage in child-related
30 activities permitted in subdivision (a) shall be entitled to
31 reinstatement and reimbursement for lost wages and work benefits
32 caused by the acts of the employer, and appropriate equitable relief.
33 Any employer who willfully refuses to rehire, promote, or
34 otherwise restore an employee or former employee who has been
35 determined to be eligible for rehiring or promotion by a grievance
36 procedure, arbitration, or hearing authorized by law shall be subject
37 to a civil penalty in an amount equal to three times the amount of
38 the employee’s lost wages and work benefits.

39 (e) An employee who is discharged, threatened with discharge,
40 demoted, suspended, or in any other manner discriminated or

1 retaliated against in the terms and conditions of employment by
2 his or her employer because the employee has exercised his or her
3 rights as set forth in subdivision (a) may file a complaint with the
4 Division of Labor Standards Enforcement of the Department of
5 Industrial Relations pursuant to Section 98.7.

6 (f) In each workplace of the employer, the employer shall
7 display a poster in a conspicuous place containing all the
8 information specified in paragraph (2) of subdivision (b). The
9 Labor Commissioner shall create a poster containing this
10 information and make it available to employers. The poster shall
11 include all of the following:

12 (1) An employee is entitled to request and use ~~24~~ *eight* hours
13 of paid time off for their child's school-related activities.

14 (2) That retaliation or discrimination against an employee who
15 requests paid time off or uses time off, or both, is prohibited and
16 that an employee has the right under this article to file a complaint
17 with the Labor Commissioner against an employer who retaliates
18 or discriminates against the employee.

19 (g) For purposes of this section, the following terms have the
20 following meanings:

21 (1) "Parent" means a parent, guardian, stepparent, foster parent,
22 or grandparent of, or a person who stands in loco parentis to, a
23 child.

24 (2) "Child care provider or school emergency" means that an
25 employee's child cannot remain in a school or with a child care
26 provider due to one of the following:

27 (A) The school or child care provider has requested that the
28 child be picked up, or has an attendance policy, excluding planned
29 holidays, that prohibits the child from attending or requires the
30 child to be picked up from the school or child care provider.

31 (B) Behavioral or discipline problems.

32 (C) Closure or unexpected unavailability of the school or child
33 care provider, excluding planned holidays.

34 (D) A natural disaster, including, but not limited to, fire,
35 earthquake, or flood.